Before the
Federal Communications Commission

Washington, D.C. 20554

In the Matter of)

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High-Cost Universal Service Support) WC Docket No. 05-337

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Federal-State Joint Board on Universal Service) CC Docket No. 96-45

RECOMMENDED DECISION

Comments of the Tennessee Telecommunications Association

June 6, 2007

I. Introduction

The Tennessee Telecommunications Association (TTA) comprises small and large, shareholder-owned (commercial) and member-owned (cooperative) rural telecommunications providers serving consumers throughout the state of Tennessee. On average, these rural local exchange carriers (RLECs) serve few access lines per mile. Yet, they have deployed state-of-the-art broadband capabilities to the edges of their networks usually offering megabit bandwidth capacity to ninety-five percent of their customers or more. Tennessee's RLECs provide broadband service to over 135 communities throughout the state, often with populations of only a few hundred. Several of these RLECs have formed a consortium which provides redundant fiber backbone service throughout the state. Tennessee's RLECs also provide the State of Tennessee with advanced, redundant, IP-capable E-911 service. These rural independent telcos continue to invest in advanced telecommunications network infrastructure and services; and they're taking the next step in technology/service deployment by deploying fiber to the home, and gigabit Ethernet backbones. Many of these companies offer advanced triple play services, bringing voice, data and video services to Tennessee's rural communities.

TTA's member companies exemplify what is right about universal service. Without universal service, it is doubtful that these companies could provide affordable, reliable, comparable or quality telecom service to Tennessee's rural consumers. Without universal service, affordable access to essential telephone service would be threatened. Rates in Tennessee could rise substantially for Tennessee's rural telecommunications consumers. Almost certainly they could not provide advanced telecommunications services as envisioned by the Telecommunications Act of 1996.(1)

With universal service, on the other hand, continuous deployment of advanced telecommunications capabilities increasingly forms the foundation of Tennessee's economic development potential. Today in Tennessee, a computer software engineer can live in Ardmore, Tennessee, and write programs for clients anywhere in the nation, and beyond. A graphic designer from Los Angeles can spend a summer teaching theater in Murfreesboro, Tennessee, and continue to serve his business clients remotely. An international political data company can locate in McMinnville, Tennessee and have the bandwidth necessary to host millions of hits from citizens and media from across the globe. Wachovia Bank or Hotwire.com can locate major data centers in Tennessee, offering the companies with the benefits of redundancy and security and offering job opportunities for Tennesseans. None of these opportunities would be possible without the substantial investment of resources committed by Tennessee's independent rural telecommunications providers.

II. TTA Urges Immediate Implementation of the Joint Board's Recommended Decision

Universal service is an essential ingredient in enabling Tennessee's RLECs to meet their commitment to the deployment of advanced telecommunications services for Tennessee's rural, high-cost consumers. In light of the importance of preserving and promoting the role of universal service in supporting economic development in rural America, TTA strongly recommends that the Commission immediately adopt the Joint Board's Recommended Decision (Recommended Decision) to establish an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive for each state.(2) TTA shares the concerns of the Joint Board that without immediate action to restrain growth in competitive ETC funding, the federal universal service fund is in dire jeopardy of becoming unsustainable(3)

It is important to note that the Recommended Decision is the result of a consensus of key policy leaders representing federal and state regulators and consumer advocates, embracing a diversity of demographic, regional, and policy perspectives. The near-unanimity of support among Joint Board members and their sense of urgency in proposing the Recommended Decision cannot be undervalued.

III. Immediate Action Is Necessary; High-Cost Fund Growth Is Unsustainable and Threatens the Universal Program's Future Viability

As noted in the Recommended Decision, the most recent universal service contribution factor (2Q07) is 11.7%, the highest it's been since its inception.(4) The ballooning growth of the universal service fund is well known by now. Since 2001, high-cost universal service support has grown from $2.6 billion to about $4 billion. This growth is attributable to two factors: Increases since 2003 represent additional resources being devoted to rural telecommunications, mainly to support cell phone companies that are new competitive entrants to rural markets. Earlier increases in spending were essentially accounting changes mandated by the Telecommunications Act of 1996(5) that required implicit subsidies in access charges to be made explicit in universal service.

Virtually all of the new growth not attributable to accounting changes mandated by the Telecommunications Act is attributable to exponential growth in designation of competitive eligible telecommunications carriers (CETCs), 94% of which are wireless carriers.(6) While support to incumbent LECs has been flat or even declined since 2003, by contrast, in the six years from 2001 through 2006, competitive ETC support grew from $15 million to almost $1 billion an annual growth rate of over 100 percent. High-cost support to competitive ETCs is estimated to grow to $2.5 billion in 2009 even without additional competitive ETC designations in 2008 and 2009.(7)

Further delay in implementing the Joint Board's Recommended Decision threatens to implode the entire universal service program, to the detriment not only of RLECs but wireless carriers and any other competitive telecommunications providers whose services depend on a reliable, quality network infrastructure supported at least in part by universal service.

IV. The Identical Support Rule Exacerbates the Ballooning of High-Cost Funding and Must Be Eliminated

The dramatic growth in designations of additional CETCs has led to the ballooning of universal service support. Not only has total support for CETCs skyrocketed in recent years threatening the viability of universal service itself but the identical support rule potentially inflates the amount of high-cost support CETCs receive. In recent years, this growth of universal service support has been due to increased support provided to competitive ETCs which receive high cost support based on the per-line support that the incumbent local exchange carriers (LECs) receive rather than the competitive ETCs own costs.(8) Since CETCs do not account for their costs under the identical support rule, there remains a largely uncontested claim that CETCs reap a windfall from universal service support(9) In other words, not only is the amount of support received by CETCs ballooning, but there is reason to believe that such support each CETC receives is well beyond what any CETC actually needs.(10)

While the Recommended Decision focuses on an immediate, emergency cap in the amount of high-cost support received by CETCs, the identical support rule is directly relevant to the hemorrhaging of the universal service fund; and, thus, the need to staunch the growth of the fund while long term solutions are developed.

FCC Chairman Kevin Martin noted the effect of identical support on universal service in a recent letter to House Telecommunications Subcommittee Chairman Ed Markey:

"I believe we need to limit the ability of rural consumers to receive support for multiple phones as well. Indeed, I agree that the current Commission policies result in the subsidies generated by the Commissions universal service rules now supporting multiple wireless networks providing services that for many consumers are effectively a complement, not a substitute, to the service already offered by the subsidized wireline incumbent local exchange carrier. I am concerned about the Commission's policy of using universal service support as a means of creating government-managed competition for phone service in high-cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. Such a policy could also make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund".(11)

The identical support rule further includes support for "accounting changes mandated by the Telecommunications Act of 1996" as CBO notes. Identical support

"means that wireless entrants receive payments from the USF that were originally designed to compensate incumbents for reducing their long-distance access rates during a period before most new entrants had entered the market. Careful design of USF payments to partly replace lost intercarrier compensation could result in a reduced flow of resources to competitive entrants, on net. That change would require at least partly decoupling the support given to incumbents from the support given to competitive entrants".(12)

As the Joint Board points out, "The identical support rule seems to be one of the primary causes of the explosive growth in the [high-cost] fund", a conclusion that leads the Joint Board to recommend "that the Commission consider abandoning or modifying this rule in any comprehensive reform it ultimately adopts [and] expressly place competitive ETCs on notice that identical support without cost justification may be an outdated approach to USF funding".(13) TTA is encouraged by the reference to the "identical support" rule in the Recommended Decision, and strongly supports the Joint Board's recommendation to abandon this rule.(14)

V. The Recommended Decision Promotes Competitive, Technological and Regulatory Neutrality

Opponents somehow argue that the Recommended Decision violates the Commission's principle of competitive neutrality. On the contrary, the Recommended Decision makes a significant progress toward reducing regulatory and competitive disparities that exist between incumbent RLECs and CETCs. Thus, the Recommended Decision promotes not violates competitive neutrality.

As the Recommended Decision notes, "fundamental differences exist between the regulatory treatment of competitive ETCs and incumbent LECs. For example, competitive ETCs, unlike incumbent LECs, have no equal access obligations. Competitive ETCs also are not subject to rate regulation. In addition, competitive ETCs may not have the same carrier of last resort obligations that incumbent LECs have. Furthermore, under the identical support rule, both incumbent rural LECs and competitive ETCs receive support based on the incumbent rural LEC's costs. Therefore, incumbent rural LECs' support is cost-based, while competitive ETCs' support is not.(15)

In addition to the regulatory and competitive disparities that exist between incumbent rural LECs and CETCs, there are a number of variances in regulatory treatment among wireless and wireline carriers, regardless of their ETC status. Since the overwhelming majority of CETCs comprises wireless carriers, these wireless/wireline regulatory disparities transfer into further inconsistencies with the Commission's principle of competitive neutrality as it applies to incumbent rural LECs and CETCs.

Moreover, the identical support rule, as noted above, violates the principle of competitive neutrality. CETC support is based on incumbent LECs' costs, not their own, leading to potential windfalls garnered by CETCs at the expense of the universal service fund. The identical support that CETCs receive includes access "payments from the USF that were originally designed to compensate incumbents for reducing their long-distance access rates during a period before most new entrants had entered the market".(16) Additionally, wireless CETCs receive support for each handset in a household. Universal service today is funding multiple carriers and multiple "lines" in many cases.

The Recommended Decision mitigates some but not all of these regulatory and competitive disparities among incumbent rural LECs and CETCs. Primarily, universal service support is already capped for incumbent rural LECs. A cap is nothing new to universal service. The funding received by traditional landline phone companies (LECs) has been capped for years. LECs have learned to cut costs and gain efficiencies under the present caps. Since support already is capped for LECs, competitive neutrality is achieved with the Recommended Decision by establishing a cap on CETC high-cost support. The Recommended Decision proposes to eliminate one form regulatory disparity between incumbent rural LECs and CETCs by imposing a cap on both types of carrier rather than capping only the incumbent LECs today.

The Recommended Decision ensures that money received by CETCs today will continue to flow to states; it just will not grow. (Note: support for incumbent rural LECs has remained flat or even declined for years.) No CETCs will be harmed and no CETCs will lose support. Under the Recommended Decision, CETCs will continue to receive an "identical support" windfall without any accounting for their own costs.(17)

VI. Opponents Need to Embrace Interim and Long-term Reform

Opponents of the Recommended Decision effectively are attempting to preserve the status quo, which is broken and is leading to a hemorrhaging of the very universal service fund which supports investment in both rural wireline and wireless rural incumbent LEC and CETC networks. By ignoring necessary reforms to the universal service program, opponents' actions threaten the entire universal service program's sustainability. If opponents' claims prevail, and the Recommended Decision is rejected, the long-term repercussion may be that all telecom providers, incumbent and competitive, wireline and wireless, will lose universal service support.

Some wireless carriers further argue that the Recommended Decision threatens build out of Phase I and Phase II E-911 emergency services. However, as noted earlier, CETCs will continue to receive universal service under the Recommended Decision. Further, MTA notes that the 2007 Montana Legislature passed legislation (HB 27) which increases the 911 fee on wireless and wireline consumers? bills from $0.50 to $1.00, for purposes of providing wireless carrier cost recovery for deploying Phase I and Phase II emergency 911 service. This legislation is similar to wireless 911 cost recovery legislation passed in most states. In other words, consumers are paying an additional $0.50 in Montana for wireless 911 deployment, and nearly 12% separately on their bills to fund an ever-growing universal service fund, the growth of which is entirely the result of CETCs' universal service receipts. It's time CETCs become part of the solution instead of the problem.

Opponents claim that the Recommended Decision will hamper investment in rural networks. As noted above, the Recommended Decision does not withdraw any support from rural network investment. It merely caps support at 2006 levels. A cap is nothing new to universal service.

The opponents' claims actually mask a more selfish motive: CETCs want to keep the floodgates open, to keep the gravy train rolling. In a